

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,918
)	
Appeal of)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare (DSW) denying her coverage under the Medicaid program for photogray lenses.

FINDINGS OF FACT

1. The petitioner is a sixty-four-year-old woman who has been a Medicaid recipient for the last three years. She has used photogray lenses in her glasses to relieve problems caused by light sensitive eyes which she has paid for herself for many years.

2. Early this year, the petitioner applied for the first time for Medicaid coverage of photogray lenses but was denied. The denial notice dated March 26, 1999, stated that she had presented "insufficient documentation of medical need." She was advised that the Department has limited coverage of this item to "patients experiencing difficulty due to eye trauma, medications or other medical condition such as albinism."

3. The petitioner stated that she began wearing glasses in 1950 while she was in high school. She always wore sunglasses because if she did not she had to keep her eyes squinted all the time and when exposed to light her

eyes burned and watered for days. Twelve years ago she started purchasing photogray lenses which relieved her problem. When she does not wear these lenses now she has the same problem with her eyes burning and watering. The petitioner's testimony was found to be sincere and entirely credible.

4. The petitioner's physician has diagnosed her as suffering from "photophobia" and has prescribed photogray lenses. He has been unable to objectively establish any pathological reason for this problem and there is no clinical test to confirm the condition. He agreed, in response to a question from the Department, that her photophobia is not due to eye trauma, medications, or other medical conditions such as albinism. Nevertheless, he believes based on her subjective complaints and the fact that she has received relief from wearing these glasses for many years that these lenses help her to see. He concluded in a May 5, 1999 letter as follows:

I do feel that she does indeed have significant subjective photophobia and do feel photogray glasses would be helpful.

The physician's statement is found to be an accurate description of her medical condition.

ORDER

The decision of the Department is reversed.

REASONS

The regulations adopted by the Department allow a Medicaid recipient to receive coverage for a prescription for "frames and lenses every two years" and to receive coverage for "contact and special lenses, when medically necessary and with prior approval." M.M. 670.3 Another section of the regulations emphasizes that "prior authorization is required for certain items, including special lenses and photo-sensitive lenses." M.M. 670.5.

The dispute in this matter centers not on whether the photogray lenses will relieve her medical condition but whether the petitioner has a medical condition at all which would necessitate the use of special lenses. The petitioner's treating physician has confirmed that he believes that the petitioner's eyes are sensitive to light and that she does need the lenses to combat her symptoms- burning and watery eyes. He bases this belief on her description of the problem and his knowledge of and observation of his patient. These descriptions and observations have allowed him to make a diagnosis and prescribe a remedy.

The Department is not willing to give any weight to this treating physician's opinion in the absence of the identification of an underlying disease or some data confirming the existence of the light sensitivity. However, there is no requirement in the regulation or in Medicaid caselaw that medical conditions be established by objective

medical evidence. While such evidence makes documentation of a condition easier, many medical conditions are not easily documented by objective data, such as back pain or mental illness. A medical condition can be, and often is, established by subjective evidence, such as reported or observed symptoms, without further measurable evidence. It is the duty of the trier of fact to weigh the credibility of subjective complaints of pain and suffering in determining whether a medical condition exists. See Fair Hearing No. 7,253. [Also see Aldrich v. Schweiker, 555 F. Supp. 1080 (D. Vt., 1982).]

In this case, the petitioner has made entirely credible complaints of burning and watering in her eyes when they are not protected by photogray lenses. The petitioner's treating physician has backed up her allegations by rendering a medical diagnosis that the petitioner has photophobia. The treating physician's opinion on the existence of a medical condition is generally entitled to great weight. See Fair Hearing Nos. 6,798, 10,097 and 10,219. There is no medical evidence of record controverting this medical diagnosis.¹ Indeed, the physician's opinion is supported by his knowledge of the petitioner, her symptoms, and the relief she has obtained by using these special lenses over a long period of time at her own expense. The weight of the evidence indicates that the

¹ The Department could have, but did not, require the petitioner to be examined by another physician.

petitioner has a medical condition² which is relieved through the use of photogray lenses. As such, she has met the medical necessity test in the regulation and is entitled to coverage.

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Board Member Robert Orleck would have remanded the matter to allow the Department to present further evidence on the issue of medical necessity and the availability of alternative treatment.

² The origin of this medical condition may be psychological as well as physical. It does not matter for purposes of treatment what the cause is as long as it is medical in nature and can be relieved by the requested treatment.